No. 220.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

ARABIAN AMERICAN OIL COMPANY,

Petitioner,

v.

HOWARD FARMER,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONER'S REPLY BRIEF.

LOWELL WADMOND,
CHESTER BORDEAU,
Counsel for Petitioner,
11 Wall Street,
New York 5, New York.

GEORGE W. RAY, JR.,
T. DARRINGTON SEMPLE, JR.,
Of Counsel.

INDEX.

	PAGE
1. There Is No Evidence That Dr. Allen Had Express or Implied Authority to Make the Alleged Agreement of Unusual and Extraordinary Duration	1
2. Petitioner Did Not Ratify the Alleged Agreement of Unusual and Extraordinary Duration	2
3. Petitioner Is Not Estopped from Denying Dr. Allen's Apparent Authority to Make the Alleged Agreement of Unusual and Extraordinary Duration	4
CONCLUSION	5

CASES CITED.

	PAGE
Carney v. *New York Life Ins. Co.*, 162 N. Y. 453 (1900)	4
Corrigan v. *Bobbs-Merrill Co.*, 228 N. Y. 58 (1920)	2
Davidson v. *Library Bureau*, 234 App. Div. 47, aff'd and modified, 259 N. Y. 654 (1932)	4
Engel v. *Simmons*, 230 App. Div. 454 (1st Dep't 1930), aff'd, 257 N. Y. 612 (1931)	2
Farmer v. *Arabian American Oil Co.*, 176 F. Supp. 45 (S. D. N. Y. 1959), rev'd, 277 F. 2d 46 (2d Cir. 1960)	2
Farmer v. *Arabian American Oil Co.*, 277 F. 2d 46 (2d Cir. 1960)	2
Farmers Fund, Inc. v. *Tooker*, 207 App. Div. 37 (4th Dep't 1923)	2
Heaman v. *E. N. Rowell Co.*, 261 N. Y. 229 (1933)	4
Latimer v. *Wonderland Amusement Co.*, 161 App. Div. 554 (1st Dep't 1914)	3
Manson v. *Curtis*, 223 N. Y. 313, 322-23 (1918)	2
Palmer v. *New York Herald Co.*, 228 App. Div. 176 (1st Dep't), aff'd, 255 N. Y. 572 (1930)	3
Trustees of Town of Easthampton v. *Bowman*, 136 N. Y. 521 (1893)	2

OTHER AUTHORITIES CITED.

2 Fletcher, *Cyclopedia Corporations* §756 (rev. ed 1954)	2, 3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 220.

ARABIAN AMERICAN OIL COMPANY,
Petitioner,

v.

HOWARD FARMER,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITIONER'S REPLY BRIEF.

1. There Is No Evidence That Dr. Allen Had Express or Implied Authority to Make the Alleged Agreement of Unusual and Extraordinary Duration.

At page 16 of respondent's brief it is stated that petitioner failed to sustain its contention that Dr. Allen had neither express nor implied authority to make the agreement claimed by respondent and that "the evidence overwhelmingly establishes the contrary."

This is simply not so. In point of fact the District Court held that "the absence of proof in the trial record of Dr. Allen's authority to bind defendant to such a contract is fatal to plaintiff's position."* The Court of Appeals for the Second Circuit stated that "we shall assume,

* *Farmer* v. *Arabian American Oil Co.*, 106 F. Supp. 45, 52 (S. D. N. Y. 1959).

arguendo, that neither express nor implied actual authority has been shown . . . ."*

Furthermore, the record clearly establishes that Dr. Allen had neither express nor implied authority to employ respondent for the unusual and extraordinary term claimed by respondent.**

Respondent's contrary assertion, *without documentation*, is incredible.

2. Petitioner Did Not Ratify the Alleged Agreement of Unusual and Extraordinary Duration.

The courts of New York have consistently held that in order to hold a principal responsible for the unauthorized acts of his agent, it must be shown that the principal ratified his agent's acts by acquiescence therein or acceptance of the benefits thereof *after having had full knowledge of all of the facts.* For example, in *Farmers Fund, Inc.* v. *Tooker*, 207 App. Div. 37 (4th Dep't 1923), the court held that there could not be ratification by a principal of unauthorized acts without "full knowledge of the material facts so that it can be said he intended to ratify the act." Accord, *Corrigan* v. *Bobbs-Merrill Co.*, 228 N. Y. 58, 70 (1920); *Trustees of Town of Easthampton* v. *Bowman*, 136 N. Y. 521, 526 (1893); *Engel* v. *Simmons*, 230 App. Div. 454 (1st Dep't 1930), aff'd, 257 N. Y. 612 (1931).

Where the principal is a corporation, any and all authority to make agreements is vested in the board of directors subject to its by-laws and statutes, or to an officer or agent with power, delegated by the board, to make agreements. *Manson* v. *Curtis*, 223 N. Y. 313, 322-23 (1918); *Farmers Fund, Inc.* v. *Tooker*, 207 App. Div. 37 (4th Dep't 1923); 2

---

* *Farmer* v. *Arabian American Oil Co.*, 277 F. 2d 46, 51 (2d Cir. 1960).

** Vol. I, pp. 82a-83a, 64a, 54a-55a of certified record.

Fletcher, *Cyclopedia Corporations* §756, at 1080-81 (rev. ed. 1954).

The certified record here reveals not a single fact to intimate that petitioner's board of directors or anyone else who could ratify acts of petitioner's agent ever had any knowledge of the alleged term of respondent's employment "for the duration of defendant's operation of its oil wells in the Kingdom of Saudi Arabia."

It is again incredible that respondent at page 17 of his brief argues that under settled New York law "Petitioner is deemed to have ratified respondent's contract of employment," when reference is not made to any act of ratification or to any knowledge, on the part of petitioner's board of directors or anyone else delegated by the board, of the unusual and extraordinary term of duration claimed by respondent.

Authorities cited by respondent support petitioner's position. For example, *Palmer* v. *New York Herald Co.*, 228 App. Div. 176 (1st Dep't), aff'd, 255 N. Y. 572 (1930), held the defendant corporation had ratified an employment contract of *three years' duration* because defendant's Executive Committee, established by the board of directors to supervise the company's affairs, had expressly authorized the agreement; and *Latiner* v. *Wonderland Amusement Co.*, 161 App. Div. 554 (1st Dep't 1914) involved an ordinary employment agreement for plaintiff's band of musicians of only *3 months' and 8 days' duration*• rather than an agreement of unusual and extraordinary duration such as that claimed by respondent.

Petitioner has not argued at any time, as suggested by respondent at page 17 of his brief, that lifetime employment agreements, apparently conceded by respondent to be

---

• So stated in the complaint, p. 4 of the record, which appears in 892 App. Div. Cases, on file at the Clerk's office, Appellate Division, 1st Dep't.

as unusual and extraordinary as an employment agreement of the alleged duration claimed by respondent here, are prohibited under New York law. Petitioner has contended that such agreements, like the alleged agreement here, must be expressly or impliedly authorized by a corporate principal's board of directors or someone delegated by the board in order to be binding on the corporation. The *Carney* and *Heaman* cases, cited by respondent at page 17, support petitioner's contention in this respect.

In *Heaman* the complaint based on an alleged oral lifetime employment agreement was dismissed because "the plain language of the managing board, clearly showing that such was the intention of the corporation, coupled with power actually or impliedly vested in the corporation itself, must be found to justify such a hiring," and there was no such showing.

In *Davidson* v. *Library Bureau*, 234 App. Div. 47, aff'd and modified 259 N. Y. 654 (1932), cited by respondent on page 17, the complaint was dismissed by the Appellate Division because, among other reasons, the alleged oral lifetime employment agreement was not authorized by defendant's board of directors. The New York Court of Appeals awarded plaintiff three-fourths of a year's salary simply because he was entitled to that under the one-year employment agreement authorized by defendant's board of directors.

3. Petitioner Is Not Estopped from Denying Dr. Allen's Apparent Authority to Make the Alleged Agreement of Unusual and Extraordinary Duration.

Respondent, on page 17 of his brief, claims that petitioner "is estopped from denying Dr. Allen's authority to make the contract in suit."

As the cases cited by respondent indicate, this merely is so when the agent in fact had apparent authority to act as he did.

Petitioner has shown, on pages 12-16 of its petition, as a matter of law Dr. Allen had no apparent authority to enter into the unusual and extraordinary agreement claimed by respondent.

Conclusion.

For the reasons stated in the petition, it is respectfully submitted that the petition for a writ of certiorari should be granted.

Dated: August 10, 1960.

Respectfully submitted,

LOWELL WADMOND,
CHESTER BORDEAU,
Counsel for Petitioner.

GEORGE W. RAY, JR.,
T. DARRINGTON SEMPLE, JR.,
Of Counsel.